

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

## MEMORANDUM

This matter is before the Court on movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The motion is successive within the meaning of 28 U.S.C. §§ 2244 and 2255 and has not been certified by the United States Court of Appeals for the Eighth Circuit as required by the AEDPA. As a result, the motion will be dismissed.

On May 18, 2005, a jury found movant guilty of four counts of mail fraud, in violation of 18 U.S.C. §§ 1341 and 2, one count of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, two counts of money laundering, in violation of 18 U.S.C. §§ 1957 and 2, and one count of bank fraud, in violation of 18 U.S.C. §§ 1344 and 2.

Movant was sentenced on August 12, 2005, to a 172-month term of imprisonment, to be followed by five years of supervised release. The judgment also required movant to pay restitution in the sum of \$1,147,683.71. The judgment

was affirmed on appeal. *United States v. Thomas*, 451 F.3d 543 (8th Cir. 2006).

The United States Supreme Court denied movant=s petition for a writ of certiorari.

*Thomas v. United States*, 549 U.S. 1144, 127 S.Ct. 1010, 166 L.Ed.2d 761 (2007).

Movant filed his first motion to vacate pursuant to 28 U.S.C. ' 2255 on April 21, 2008, asserting nine claims of ineffective assistance of counsel. *Thomas v. U.S.*, No. 4:08-CV-599-CEJ (E.D. Mo.). This Court denied the motion based on movant=s failure to file his motion to vacate within the statute of limitations. The Eighth Circuit Court of Appeals denied movant=s application for a certificate of appealability on March 31, 2011.

Movant filed his second ' 2255 motion to vacate on May 6, 2011, again asserting claims of ineffective assistance of counsel. *Thomas v. U.S.*, No. 4:11-CV-810-CEJ (E.D. Mo.). This Court dismissed the action as untimely and successive on May 18, 2011. Movant did not file an appeal.

Movant filed his third ' 2255 motion to vacate on June 19, 2013, asserting one claim of ineffective assistance of counsel. *Thomas v. U.S.*, No. 4:13-CV-1244-CEJ (E.D. Mo.). This Court dismissed the action as successive on August 7, 2013. The Eighth Circuit Court of Appeals denied movant=s application for a certificate of appealability on February 4, 2014.

In the instant motion, movant once again challenges his August 12, 2005 sentence. Movant asserts one claim of ineffective assistance of counsel and argues

that he was improperly sentenced under the 2002 version of the Sentencing Guidelines. Movant's motion is successive, and absent certification from the United States Court of Appeals, this Court lacks authority under 2255 to grant him relief. *See* 28 U.S.C. 2244 and 2255. As such, this action will be dismissed without prejudice.

A separate Order of Dismissal will accompany this Memorandum.

Dated this 24th day of June, 2014.

  
\_\_\_\_\_  
CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE